

- The economics and marketing of programming tiers, competitive services and new television products has been an ongoing focus. Examples of tiering and new product-related assignments include:
  - ✓ Designed and managed consumer research and provided recommendations to Comcast regarding the composition, packaging and pricing of the company's initial digital service tiers in preparation for the deployment of digital settop boxes.
  - ✓ For a major content owner, evaluates media market trends and implications on an ongoing basis. The implications of tiering, channel placement and ownership of the organization's network distribution outlets has been a specific focus. Mobile distribution opportunities and economics, on-demand economics and interactive advertising prospects have also been assessed recently.
  - ✓ For multiple clients, assessment of the relative merits of cable HFC distribution infrastructure and telephone company fiber optic network architecture from a consumer perspective, emphasizing the relative advantages and disadvantages of each technical approach in terms of services and features provided to subscribers. Based on this assessment, developed detailed recommendations regarding client positioning and communications strategies in response to telephone company marketing initiatives.
  - ✓ For multiple clients, assessment of Internet-based video content distribution prospects, considering both economic opportunities and potential risks to existing distributors. Analyses have specifically addressed Internet-based delivery of movies and other television programming and its implications for cable networks and video-on-demand services.
  - ✓ For Cox, provided a comprehensive assessment of current and likely future satellite competitor technology and marketing/promotional initiatives as a basis for devising Cox product, packaging and marketing strategies.
  - ✓ Also for Cox, analyzed HDTV opportunities and timing considerations with respect to initial deployment of HDTV services.
  - ✓ Assessment of home video rental market trends and prospects in the context of the evolution of cable-based video-on-demand services.
  - ✓ Assessment of the premium television market, including prospects for major premium TV providers and the impact of movie distribution alternatives (including video-on-demand, Netflix and Internet-based services) on premium television content strategies.

- ❑ Co-author of Digital Broadcasting: Where Do We Go From Here? This report, released in 2010, evaluated future business prospects and market opportunities for the broadcast television industry – focusing on multicasting, mobile video and other services enabled by digital transmission technology.
- ❑ On behalf of the National Cable & Telecommunications Association (NCTA), authored An Analysis of the Cable Industry's Impact on the U.S. Economy. This comprehensive economic impact analysis, released in 2011, analyzed cable industry subscriber growth patterns and operating characteristics and utilized input-output modeling techniques to evaluate cable industry financial flows. These flows were then used to quantify the industry's direct and indirect contributions to U.S. employment, personal income and gross economic output at the national level as well as by individual Congressional District. Earlier versions of this analysis were prepared in 2008, 2003, 1998, 1990 and 1986.
- ❑ Created and has directed Bortz Media's subscription television industry competitive assessment practice since launching this practice in 1996. Services provided to major cable companies have included ongoing analysis of wireline, satellite and other competitors, addressing strategies, economics, technical capabilities/constraints and the overall threat profile presented by market-level cable competitors. In connection with these engagements, have developed market level strategic and tactical plans for cable operators to address competition. These analytical and planning efforts have emphasized competitor economics and consumer marketing strategies, as well as the development/deployment of new consumer products and technologies including digital settop boxes, DVRs, video-on-demand, HDTV, interactive television, high-speed Internet and telephone service.
- ❑ Analyzed the fair market value of television, radio and Internet rights for major professional and college sports organizations. Selected clients have included the NBA, NHL, MLB, MLS, NASCAR, PGA Tour, PBR, PRCA, Big East, Big 12, the WSOP and many local professional franchises. Engagements have represented over \$20 billion in rights values.
- ❑ For a major broadcast network, assessed digital television opportunities, considered technological and market factors in defining a digital television strategic focus, and developed recommendations relating to cable distribution of digital signals and high definition programming.
- ❑ Provided comprehensive digital transition business planning assistance to the Corporation for Public Broadcasting, the Association of Public Television Stations, the Ford Foundation, the James Irvine Foundation and selected individual public broadcasters. These assignments assessed new service opportunities and involved working with individual public television (PTV) stations to develop digital service/financial models. Elements of the projects included assessment of the overall media environment and its implications for PTV (focusing on the impact of emerging technologies), exploration of digital capacity utilization issues and alternatives

(including data-driven, interactive and commerce-based applications), and evaluation of partnership opportunities with both for profit and non-profit entities.

- ❑ Assisted various other public broadcasting organizations in numerous engagements over the past 20 years. In addition to the assignments noted above, these have included development of comprehensive market analyses, development of service and operating structure recommendations for stations, evaluation of advertising potential, assessment of merchandising and licensing practices, support in negotiations for programming distribution, and assessment of Internet business opportunities.
- ❑ Completed a comprehensive, multi-phase assessment of digital radio opportunities, addressing the market potential for both terrestrial and satellite-delivered digital radio.
- ❑ Analyzed financial prospects and estimated the fair market value of numerous commercial television station properties, including both network affiliates and independents in markets ranging from the largest to the smallest. Analyses evaluate market trends and likely future market capture in terms of both advertising revenue and audience, resulting in the development of pro forma financial projections.
- ❑ Provided strategic planning assistance to Landmark Communications on multiple occasions, supporting the company's efforts to enhance its television station operations.
- ❑ In the mid-1980s, developed and conducted an annual Cable Operating Performance Benchmarks study for participating cable companies on behalf of the National Cable & Telecommunications Association. This study focused on the interrelationships between operating characteristics and financial performance at the cable system level, utilizing detailed operating, financial and market information from more than 150 separate cable systems. Separate industry level analyses have addressed the industry's economics and financial characteristics on numerous subsequent occasions.
- ❑ Analyzed financial prospects and estimated the fair market value of over 100 cable television properties both domestically and internationally. Assessments of current and future cable television economics have also been developed on a recurring basis for a major financial institution, as well as an international consulting organization.
- ❑ Designed, managed and executed a wide range of quantitative and qualitative research studies, including statistically representative national (as well as local and regional) telephone surveys, Internet-based surveys, focus groups, one-on-one interviews and new product trials.

*Senior Associate, BBC, Inc. (1983 to 1988)*

James M. Trautman

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Responsible for execution of multi-faceted research and analytical assignments addressing industries including media, entertainment and telecommunications, real estate, banking and public facilities/recreation.

**EDUCATION:**

M.B.A., Finance (1990), University of Colorado

B.S., Economics (1982), Claremont McKenna College, Claremont, California

**OTHER:**

Author of Digital Broadcasting: Where Do We Go From Here?; An Analysis of Cable Television's Impact on the U.S. Economy; and Public Television's Transition to a Digital Future. Co-Author of Public Television in the Information Age; Great Expectations: A Television Manager's Guide to the Future; and Sports on Television: A Whole New Ballgame.

# EXHIBIT C

**COMCAST CABLE COMMUNICATIONS, LLC**

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2. I am President of Goodfriend Government Affairs and represent clients before the U.S. Congress, the Federal Communications Commission, the White House, the U.S. Department of Commerce, the U.S. Department of Agriculture, and various state legislatures on telecommunications and renewable energy issues. My clients include Fortune 500 companies, such as DISH Network and Lennar; start-up companies, such as independent programmer nuvoTV (formerly SiTV); and non-profit advocacy groups. Through my various government and corporate positions, I have gained experience, knowledge and expertise regarding various aspects of media company operations, as well as the fundamental policy reasons underlying government actions related to media issues. I am also a regular commentator and contributor to Sirius Radio, Fox Business, Fox News, CNBC, and MSNBC.

3. I held executive positions at DISH Network, L.L.C., the third-largest Multichannel Video Programming Distributor (“MVPD”) in the U.S., from 2001-03, and 2004-08. During that time, I held the following positions: Director of Programming; Director of Legal and Business Affairs; Director of Business Development; and Vice President of Law and Public Policy.

4. During my tenure at DISH Network, I worked on numerous programming and other content-licensing agreements, with a particular focus on start-up independent networks. In addition to my work on conglomerate and niche on-demand content agreements for linear video and online/on-demand content services, I was responsible for negotiating the license agreement with BridgesTV and other independent programmers, and worked on the team selecting non-profit, educational set-aside channels. I also worked on the proposed merger between DISH Network and DIRECTV/Hughes, reviewing numerous programming agreements and related documents as part of the document review process.

5. In my role reviewing and negotiating programming agreements, particularly as DISH’s Director of Programming, I paid attention to details surrounding tier and channel placement, which I found to be particularly important issues for new, independent programmers. Channel placement was important to new, independent programmers because it had a direct impact on viewership and therefore advertising revenue (i.e., better channel placement resulted in higher ratings which in turn resulted in higher advertising revenues). My programming-related duties included negotiating the terms and conditions of carriage on DISH Network, which invariably led to discussions surrounding channel placement, since to programmers this was valuable element of the agreement.

6. From 2003-04, I co-founded and served on the executive team of Air America Radio, the nation’s first commercial progressive talk radio network, including roles as Executive Vice

President, General Counsel, and interim CEO. I was responsible for negotiating all network affiliation agreements with terrestrial radio stations and satellite radio services (XM Satellite Radio became the exclusive satellite radio distributor of Air America Radio at the network's launch). This specifically entailed working with radio station ownership groups and satellite radio providers on affiliation agreements governing the carriage of Air America Radio's network feed. While distinguishable in many respects to programming agreements with MVPDs, there were some similarities in the issues related to radio and MVPD carriage agreements. Notably, this included the channel placement of Air America Radio on XM Satellite Radio's channel lineup, since in both instances channels are arranged serially on a programming guide/subscriber interface; channels often are grouped together in neighborhoods of similarly themed channels; and some parts of the channel lineup are more valuable than others with respect to garnering audience share.

7. I served as Media Legal Advisor to Federal Communications Commissioner Susan Ness from 1999-2001. Among other things, I advised the Commissioner on transactions including CBS/Viacom, AOL/Time Warner, AT&T/TCI, AMFM/Clearchannel, and other smaller transactions. In that capacity, I gained experience and understanding regarding the principles and policy rationale underlying FCC merger review and associated conditions imposed related to mergers, including the impact on the independent programming market of large-scale media mergers.

8. In addition to my service at the Federal Communications Commission, my other government positions included Deputy Staff Secretary to President William Jefferson Clinton (1998-99); Professional Staff Member to the Senate Government Affairs Committee (1991-93); and Professional Staff Member to the House Select Committee on Narcotics Abuse and Control (1990-91).



9. I received my J.D., *cum laude*, from the Georgetown University Law Center (1997) and there served as an editor on the American Criminal Law Review. My B.A. *summa cum laude* is from Beloit College (1990); and I was a fellow at the University of Chicago School of Business (1989).

10. I was recently asked by Bloomberg L.P. (“Bloomberg”) to provide an opinion on several programming issues including (i) the practice of neighborhooding and what constitutes a neighborhood in the MVPD industry; and (ii) what channels are viewed as news channels. I have also reviewed Bloomberg’s Complaint and the Answer of Comcast Cable Communications, LLC in the above-captioned proceeding, including all exhibits and attachments.

11. In what follows, I explain the practice of neighborhooding, how many channels and channel genres are viewed, and review what channels are considered news channels.

## **I. WHAT IS A NEIGHBORHOOD?**

12. I generally agree with Mr. Egan, Comcast’s expert, that there is no “generally-accepted definition of a news neighborhood among industry professionals.” Answer, Ex. 4 at ¶ 11. Unlike Mr. Egan, however, it is my experience that the clusters of channels identified by Bloomberg in Comcast’s channel lineups would be considered neighborhoods of similarly-themed, or same-genre, channels. As I explain in more detail below, even a cluster of three channels can be a neighborhood. The quality of a neighborhood, however, probably varies based on how completely it captures a subscriber’s expectation to find similarly-themed channels close, if not contiguous to each other.

13. In my opinion, the 368 groupings of at least four news channels in a block of five identified by Bloomberg in Exhibit H would constitute a neighborhood of news channels. Based on

my experience in the MVPD Industry, these groupings would normally be viewed as neighborhoods since they contain several news channels within the same general block of channels.

14. In my opinion, a group of at least four news channels in any five channel positions is large enough to attract viewers in search of news programming and to suggest that the grouped channels share a common genre. It is my experience that viewers would more easily remember the general location of those channels and find them again more easily than if the channels were scattered throughout the programming lineup. Finally, when a consumer presses the “guide” button on his or her remote control device, they typically will see on the electronic programming guide (“EPG”) the contiguously placed neighboring channels to the one they are watching. This is particularly important in the news category because during a breaking news story, the viewer might want to get another network’s perspective on the story quickly or switch to another network during commercial breaks. A neighborhood of news channels help to facilitate that consumer behavior. As a result, being in the same grouping with the most popular news channels is particularly important for new independent news channels who are then much more likely to be found. Moreover, during a breaking news story, channels not included in the neighborhood are at a significant disadvantage, as they are much less likely to be found.

15. Because viewers use their remote controls to “surf” or “flip” between channels as well as to pull up electronic programming guides that organize listings by channel number and automatically focus on the channel being viewed, channels benefit simply from being located in close proximity to other channels of the same genre. Also, if a channel has particularly good ratings, other similarly themed channels will benefit from being placed near that channel within the same neighborhood.

16. According to the data I reviewed to prepare this report, the five news channels most commonly carried in the 368 channel groupings identified by Bloomberg in its Complaint are Headline News (“HLN”), CNBC, CNN, Fox News, and MSNBC. Based on my experience, these are the five most popular news channels.

17. In my opinion, a grouping containing four of these five news channels would easily qualify as a neighborhood for several reasons. First, four channels is a significant enough block to garner a viewer’s attention. For example, at least four channels placed together can typically be seen at the same time when looking at a program guide. Second, these channel groupings are where subscribers are most likely to turn in order to view news programming. Thus, it is likely that viewers would recognize and remember to go to this grouping for their news needs.

18. The neighborhooding practice applies to genres other than news and can manifest itself in relatively small numbers of channels grouped together. For example, in my experience a grouping of at least four sports channels in any block of five channel positions would constitute a sports neighborhood, as would a grouping of at least four channels aimed at children in any block of five channel positions. Indeed, that is why so many MVPDs carry such sports and children neighborhoods.

19. From my experience as founder and Chairman of the non-profit consumer advocacy group, Sports Fans Coalition, I know that sports fans tend to look for sports programming within distinct channel groupings, including groupings of at least 4 channels. For example, I have heard complaints from sports fans that they are annoyed when surfing through a series of sports channels and some games are located elsewhere. In my opinion, this reflects a consumer preference to find sports programming channels grouped together and a negative consumer reaction when one of those channels is unavailable in that grouping.

20. Based on my experience, neighborhoods containing at least one-third of the news channels on a headend likely would be considered by subscribers as an important destination for news consumption, especially when they contain the most widely viewed news channels. I disagree with Comcast's assertion that only a grouping of "all or a substantial majority" of news channels qualifies as a neighborhood. Comcast asserts that the Commission should assess the importance of a channel grouping, "in part, on whether customers, encountering a given number of news channels in adjacent channel positions, would assume that other news channels will not be found elsewhere on the system." Answer at ¶ 53. In my opinion, a neighborhood can be comprised of few channels, and there can be more than one neighborhood of the same genre on a channel lineup. The material question is whether an MVPD's neighborhooding practices are helpful to the consumer. A larger neighborhood may be more consumer-friendly than two smaller neighborhoods, but in every such instance, the MVPD has created a neighborhood of similarly-themed channels to garner the viewer's attention.

21. In his Declaration, Mr. Egan identifies four MVPDs that he claims have set the "industry standard" for neighborhooding: DirecTV; Verizon; AT&T U-Verse; and Insight. *See* Answer, Ex. 4 at ¶¶ 19, 22. He notes that "[e]ach of these MVPDs places more than 70% of all of its news channels in a neighborhood in at least 80% of their lineups, suggesting that the minimum percentage standard for a group of news channels to qualify as a neighborhood might well be at least 70%." *Id.* at ¶ 19. While Mr. Egan concludes that only such comprehensive groupings are neighborhoods, I believe he is merely showing that some MVPDs' neighborhooding practices are more consumer-friendly than others. Like any other variable of MVPD quality, such as waiting-time on a service line or for an installer to arrive, the comprehensiveness of a neighborhood goes directly to whether a consumer will be satisfied with the product, not whether channel neighborhoods exist. The "look and feel" of a service can be impacted by how channels are organized and the appearance

on the EPG. I believe that the EPG of DISH Network, for example, generally is superior to that of Comcast in part because channels are grouped more logically and neighborhoods of like-themed channels are larger. Thus, in my opinion, Mr. Egan's conclusions reflect differences in quality between various neighborhoods but not the existence or absence of neighborhoods. In fact, in my opinion, the addition of other new channels into the existing news neighborhoods on Comcast headends will be a benefit to consumers as it will become a larger neighborhood with news channels grouped more logically and news channels will be easier to find.

22. A neighborhood can consist of only three contiguously located channels. I have had direct experience with creating a neighborhood of three contiguous channels that showed all the effects of neighborhooding at work, even within a very small cluster of channels. During 2006-07, while I was serving as Vice President of Law and Public Policy for DISH Network, the cable TV industry appeared to be increasing its lobbying at the state level to impose what we viewed as discriminatory sales taxes on satellite TV subscribers. Working with my counterparts at DIRECTV, we created a new channel of text alerting satellite subscribers that their state legislature was contemplating such a tax and providing the main phone number for that state legislature (we also did the same thing nationally and provided the phone numbers of relevant Members of Congress). We deliberately placed this channel between C-SPAN and C-SPAN 2, on both DISH Network and DIRECTV, since we hypothesized that more politically active subscribers would watch these channels and "surf" between the two of them. Finally, we created a new channel number<sup>1</sup> and name ("NOTAX") to place within the EPG between C-SPAN and C-SPAN 2. The results exceeded our expectations. In Michigan, for example, the state legislature was flooded with phone calls protesting

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<sup>1</sup> As I recall, the engineering staff was able to insert a new channel between two contiguous existing channels with relative ease. My recollection is that they put the substance of the new, NOTAX channel in the datastream from the satellite. Then through software and/or engineering, they were able to make the new channel appear on the EPG as located between CSPAN and CSPAN2.

the imposition of the discriminatory satellite tax. In Congress, the members of the relevant subcommittee whose phone numbers we listed asked that we please take down the slate because they were being overwhelmed with calls. Thus, in this particular case, I believe that three channels constituted a neighborhood of public affairs programming; that subscribers “surfed” between like-themed channels and therefore came across the DISH/DIRECTV NOTAX channel and that the effect of contiguous grouping on the EPG was materially demonstrated by the number of subscribers who took action in response to the new channel.

23. Similarly, my client, nuvoTV, is an English-language, Latino-themed programming service that has negotiated placement in a small neighborhood with similarly themed channels such as Mun2 rather than general Spanish-language services..

24. In conclusion, based on my experience in and knowledge of the MVPD industry, Comcast does appear to organize its news channels by genre into groups commonly referred to as neighborhoods. (Moreover, the same is true with respect to Cablevision, Charter, and Cox.) Industry practice shows that there are generally two types of news channel groupings found on MVPDs’ channel lineups. The 10-15 channel neighborhoods located above channel 100 identified by Mr. Egan, and the 4-6 channel neighborhoods located below channel 100 that are often found the headends of Comcast and other cable operators. Although the neighborhoods identified by Mr. Egan are certainly larger than the neighborhoods identified by Bloomberg, both result from deliberate decisions to group channels by genre, both are designed to capture the attention of viewers, both are designed to help viewers find and remember the location of news, and most importantly, the comparatively smaller neighborhoods contain a significant number of the most popular news channels. As such, both would clearly qualify as neighborhoods.

## II. WHAT CONSTITUTES A NEWS CHANNEL?

25. Comcast includes many types of channels in its definition of a news neighborhood. In my opinion, however, such channels need not be included in a channel grouping in order to create what a consumer would consider to be a news neighborhood. Having reviewed Comcast's answer and the corresponding channel line-ups, it is my opinion that Comcast vastly overstates the number of news channels that are carried on its headends.

26. HD Feeds – HD feeds usually are placed in a different location on the channel lineup than their standard-definition ("SD") counterparts and therefore need not be included in a news neighborhood of SD channels. This is evident on DISH Network and other MVPDs, where HD channels generally are grouped together and placed elsewhere on the EPG from their SD counterparts.

27. Sports – "Sports news channels" should be counted as sports channels rather than news channels. From my experience dealing with sports fans involved with Sports Fans Coalition, ESPNNews, for example, is considered a sports channel more akin to ESPN than, say, a news channel like CNN.

28. Foreign Language – "Foreign-language news channels," Spanish-language and other foreign-language news channels, are typically located in Spanish-language and/or foreign language neighborhoods rather than with English-language news channels. I agree with Mr. Egan that "the language spoken is generally considered more important for MVPD grouping purposes than the genre . . . " Ex. 4, Attachment A, at 2-3. However, even within the multicultural space, programming and neighborhooding is increasingly sophisticated. DISH Latino, for example, offers numerous Spanish-language channels, but sorts them by geographic interest (e.g., Mexican, Colombian). My client, nuvoTV, is an English-language, Latino-themed programming service that

should not be placed in a neighborhood with Spanish-language services but rather with similarly themed channels such as Mun2. Such precisely targeted programming services and neighborhooding practices illustrate why “Foreign-language news channels” do not belong in a news neighborhood that includes channels such as CNN, CNBC, Fox News, and MSNBC.

29. PEG – Public, Educational, and Government (“PEG”) channels generally are not news channels. In particular, government access channels generally do not provide much, if any, reporting or analysis. DISH Network often will group its public interest set-aside channels (in many ways the satellite industry’s equivalent to PEG channels) within a neighborhood but sometimes will place one such channel (e.g., Pentagon Channel, RFD-TV before it went commercial) in a neighborhood of similarly themed channels. In my opinion, PEG channels might belong within their own distinct neighborhood, or interspersed throughout the channel lineup, but in any event are not appropriate components of a news neighborhood.

30. Weather – A weather-only channel need not be included in a news neighborhood. It is my experience that weather is more of its own distinct genre. For example, in promoting their newscasts, broadcast stations advertise that they feature “news, weather, and sports,” thus reflecting the widespread recognition that weather and sports can be distinguishable from news.

31. Moreover, The Weather Channel often is not promoted as a news channel but rather a weather channel, with an audience of distinct interests and demographics from channels that everyone would agree are news channels (e.g., CNN, MSNBC)

32. Similarly, I do not believe Weatherscan Local Network and other local twenty-four weather feeds constitute news channels. A channel that displays a radar screen and/or a text weather forecast twenty-four hours a day does not provide any reporting or analysis regarding news.



Indeed, it is my experience that local weather channels generally are not considered to be news channels by those within the MVDP industry.

33. Multicast Streams – In my opinion, most of the multicast channels identified by Comcast are not appropriate elements of a news neighborhood. Generally, in my experience, most multicast channels are viewed as broadcast channels by MVPDs, as evidenced by intense advocacy from the MVPD industry, including Comcast, against granting broadcasters “must carry” rights for their digital multicast programming streams. Moreover, the programming schedules of many multicast channels cited by Comcast do not, in my opinion, constitute the same news genre as, say, CNN, Fox News, MSNBC, or CNBC.

34. The following examples below are a sample of channels identified by Comcast as news but that, in my opinion, do not fit the news genre and would not be included in a channel grouping in order to create a “news” neighborhood:

- First, 26 multicast channels cited by Comcast show only local weather radar and/or forecasts and as discussed previously should not be considered news channels. Specifically, I reviewed the scheduled programming for the following channels that Comcast alleges are news channels and have determined that they should not be classified as news channels because they feature primarily local weather forecasts and/or radar: KAREDT2, KCPQDT2, KHQDT2, KSHBDT2, KSLDT3, KTCADT4, KUSADT2, KXTVDT2, Local Weather, NBC Plus, WDTVDT2, WFMZDT2, WFSBDT3, WFTVDT2, WHTMDT3, WIPBDT3, WISHDT2, WISHDT3, WJLADT2, WKRNDT2, WKYUDT3, WMARDT3, WPTVDT2, WTHRDT2, and WTSPDT2.
- I reviewed the scheduled programming for the following channels that Comcast alleges are news channels and have determined that the following channels are Public Broadcasting Service World feeds: WGBXDT2, WGBYDT2, WLIWDT3, WPSUDT3, WTIUDT2, and WVTADT4. During many parts of the day, these channels focus on cultural and information programming and should not be classified as news channels. Examples of programming featured between 6 a.m. and 4 p.m. on these channels are “Independent Lens,” “Roadside Stories,” “Appalachians,” “400 Years of the Telescope,” “The Buffalo Flows,” “Fly Boys: Western Pennsylvania’s Tuskegee Airmen,” “the Marines of Montford Point: Fighting for Freedom,” “POV,” “Nature,” and “Nova”.
- I reviewed the scheduled programming for the following channels Comcast alleges are news channels and determined that the following channels feature community oriented or

informational programming and should not be classified as news channels: KCRT Cable, KQEDDT3, KTCADT2, KUEDDT2, City of Houston- The Municipal Channel, WGTVDT3, WHYYDT3, WKGBDT3, WNEODT2, and WTVJDT2. Examples of programming featured between 6 a.m. and 4 p.m. are “NASA Science Files,” “Sidewalks: Video Nite,” “Sidewalks Entertainment,” “Kaiser Permanente Specials,” “The Fabulous Dorseys,” “Best of Expeditions with Patrick McMillon – The Big Cypress: Walking Catfish and Diving Birds, Part Two,” “Desert Speaks – Penguins in a Patagonia Desert,” “Arabian Horse: The Ancient Breed,” “Common Ground – Lake ADA Art Craw,” “Venture North – Winter Magic in Biwabik, MN,” “In the Shadow of the Acropolis,” “400 Years of the Telescope,” “Fly Boys: Western Pennsylvania’s Tuskegee Airmen,” “The Marines of Montford Point: Fighting for Freedom,” “Outdoor Wisconsin,” “Nova,” “The Grill Sergeants,” “The Buffalo Flows,” and “Peter Pan: Kentucky Ballet Theatre.”

- I reviewed the scheduled programming for the Community Bulletin Board channel and have determined that it should not be classified as a news channel. The channel displays written messages submitted by local non-commercial entities.
- I reviewed the scheduled programming for the Comcast 100 channel and do not believe that it should be classified as a news channel. According to programming information available on the Internet, the channel airs paid programming between 6 a.m. and noon and carries much non-news programming at other times. Examples of programming featured include “Game of the Week” and “The Home Loft”.
- I reviewed the scheduled programming for Tango Traffic and WPHLDT4, a stream of Tango Traffic. They air 24 hour programming relating to traffic conditions and should not be classified as news channels.
- I reviewed the scheduled programming WBCCDT4, which is a Public Broadcasting Service channel that focuses its programming on the arts and cultural programming. I do not believe that it should be considered a news channel.
- I reviewed the scheduled programming for LINK TV. That channel focuses on foreign cultural and informational programming and should not be classified as a news channel. Examples of programming featured between 6 a.m. and 4 p.m. are “American Shopper,” “LaPaloma – The Melody of Lansing,” and “World Music Blocks.”
- I reviewed the scheduled programming for WNVTD8. That channel broadcasts RT Español, the Russia Today channel in the Spanish language. WNVTD8 should be classified as a Spanish-language channel rather than a news channel for purposes of neighborhooding.
- I reviewed the scheduled programming for WNCNDT3. That channel generally features paid and sports programming between the hours of 6 a.m. and 4 p.m. and should not be classified as a news channel.
- I reviewed the scheduled programming for the following channels and determined that they feature primarily foreign news programming: KBDIDT3, KBTCDT2, KUENDT2, WDSCDT3, WHTJDT3, WNEODT3, WNVC, WNVCDT, WNVCDT2, WNVCDT4,

WNVCDT5, WNVTD1, WNVTD2, WNVTD4, WNVTD5, WNVTD6, and WNVTD7.

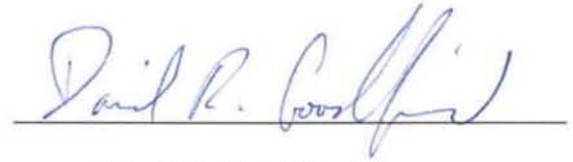
### III. CONCLUSION

35. For all of these reasons, I conclude that (a) channel positioning is an important factor in determining the viewership of a network; (b) neighborhooding is a critical element of channel positioning; (c) there is no exact number of channels that constitute a neighborhood but a neighborhood can consist of as few as three channels; (d) neighborhooding practices may vary in quality between MVPDs; and (e) news neighborhoods generally consist of channels like CNN, CNBC, and MSNBC but generally need not include HD, sports, foreign-language, PEG, weather, or broadcast multicast services. Finally, in my opinion, the 368 groupings of at least four news channels in a block of five identified by Bloomberg in Exhibit H of its Complaint constitute neighborhoods of news channels.

36. I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

**FOR PUBLIC INSPECTION**

Dated: August 30, 2011



David R. Goodfriend

APPENDIX A

**David Raphael Goodfriend**  
**1300 19<sup>th</sup> St. N.W.**  
**5<sup>th</sup> Floor**  
**Washington, D.C. 20036**

**President, Goodfriend Government Affairs (2009-present)**

Represent and counsel a wide range of organizations in the telecommunications and renewable energy sectors before the U.S. Congress; Federal Communications Commission; White House; U.S. Depts. of Justice, Commerce, Agriculture, and other federal and state government organizations. Clients have included Fortune 500 companies such as DISH Network and Lennar; technology and media start-up firms such as WildBlue satellite broadband and nuvoTV network; investment fund Council Tree; and public interest group Sports Fans Coalition.

**Vice President, Law and Public Policy, DISH Network (2006-09)**

Managed the state and federal legislative and political agenda for DISH Network, the third-largest pay-TV provider in the U.S. Developed policy proposals and advocated on behalf of the company before federal and state governments. Coordinated with business units including programming, corporate development, and technology to promote pro-competition public policy in telecommunications.

**Director of Programming, Director of Business Development, DISH Network (2004-06)**

Reviewed potential programming services seeking carriage on DISH Network; negotiated affiliation and other content-licensing agreements between content providers and DISH Network, including linear, pay-per-view, on-demand, and online content delivery, with a particular emphasis on independent, niche programming services. Worked with technology and business development teams on broadband delivery options for DISH Network, including hybrid satellite/terrestrial wireless broadband platforms; satellite broadband; DSL partnerships; and other two-way high speed platforms.

**Co-Founder, Executive Vice President and General Counsel, Air America Radio (2003-04)**

Co-founded and served on initial executive team of the first commercial "Progressive Talk" radio network in the U.S., which broke all audience share records for any new radio network launch since the 1940s. Negotiated all affiliation/syndication agreements between Air America Radio and distributors, including major radio station ownership groups and satellite radio providers. Negotiated all talent contracts. Managed successful transfer to new management team after initial launch.

**Director of Legal and Business Affairs, DISH Network (2001-03)**

Managed all federal regulatory affairs for DISH Network, including representation before the Federal Communications Commission; managing regulatory outside counsel; drafting pleadings; internal compliance; and policy development. Led the regulatory team during the proposed merger between DISH Network (EchoStar) and DIRECTV (Hughes).

**Media Legal Advisor, Commissioner Ness, Federal Communications Commission (1999-2001)**

Advised majority Commissioner on all matters in the broadcast, cable, Direct Broadcast Satellite, and related issue areas, including the broadcast digital transition; cable horizontal ownership caps; implementation of the Satellite Home Viewer Improvement Act of 1999; and the AOL/Time Warner, CBS/Viacom, AMFM/Clearchannel, AT&T/TCI, and other mergers.

**Deputy Staff Secretary, The White House (1998-99)**

One of three individuals responsible for reviewing, summarizing, and regulating all documents read or signed by the President, including bills, executive orders, staff memoranda, diplomatic cables, and national security documents. Helped manage a staff of roughly 100 individuals in the correspondence, clerks, and related offices. Served as traveling staff secretary to President Clinton on presidential visits to Europe and Central America.

**Professional Staff, U.S. Senate Governmental Affairs Committee (Sen. Herb Kohl, Chairman) and U.S. House Select Committee on Narcotics Abuse and Control (Rep. Charles B. Rangel, Chairman) (1990-1993); Military Legislative Assistant, House Armed Services Committee (1993-95)**

**Associate, Law Clerk, Willkie Farr & Gallagher (1995-98)**

**EDUCATION**

**Juris Doctor, *cum laude*, Georgetown University Law Center (1997)**

**Bachelor of Arts, *summa cum laude*, Beloit College (1990)**

**Chicago Business Fellow, University of Chicago Graduate School of Business (1989)**

## EXHIBIT D



BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Complaint of	)	
	)	
BLOOMBERG L.P.	)	MB Docket No. 11-104
	)	
v.	)	
	)	
COMCAST CABLE COMMUNICATIONS, LLC	)	
	)	
	)	
	)	

DECLARATION OF DOUGLAS FERGUSON

I, Douglas Ferguson, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is Douglas Ferguson. My business address is College of Charleston, Department of Communication, 9 College Way, Charleston, SC 29424. I am currently a professor in the Department of Communication at the College of Charleston.

2. As I explain below, I have spent thirty-five years working in the field of media, and in particular working on issues involving cable television, broadcasting, and web content. Cable television is my earliest academic interest and I have closely followed the industry since the late 1960s. Although my actual employment in the cable industry was brief, it has always been a field of great interest to me and is a principal focus of my academic studies.

3. I have authored publications on topics including television viewing motivations, broadcast programming strategies, and media economics. My work has attracted several



collaborators, but some of my work is single-authored. My research and other writing have been cited by other scholars more than 37 times per year, on average, for the past 22 years. The book that Dr. Susan Eastman and I wrote on programming strategies, *Media Programming*, now going into its 9<sup>th</sup> edition, is my most widely known work among scholars who study television.

4. My cable experience began with a master's thesis completed in 1973, in which I studied the local origination efforts of the first major-market CATV failure, which took place in 1967 just outside of Cleveland. Later in 1973, I went to work for Gerity Cablevision in Bay City, MI, a cable system that operated a 24-hour, 7-day local channel for which I was in charge of local and syndicated programming. The system was limited by the FCC's Second Report and Order to the importation of only two distant signals, back in the days before satellites delivered signals to cable operators and before there were any real cable channels. Part of my duties involved programming equipment at the headend to switch certain distant signals on or off to avoid network duplication.

5. In 1974, I returned to my hometown (Lima, Ohio) to work in local broadcast television for the NBC affiliate, where I gradually progressed from film editor to station manager. During those years, I maintained close and frequent contact with surrounding cable systems. The city of license had very heavy cable penetration owing to its single-station status surrounded by four competitive television markets (Toledo, Dayton, Columbus, Ft. Wayne). In 1987, my doctoral studies began and in 1990, I received my Ph.D., which was based on a dissertation that focused on the influence of cable television as a major variable in audience behavior. Since then I have co-authored three books on television, written 20 journal articles and presented 40 papers at conferences. My work has addressed both cable and broadcast issues related to television.

6. I was recently asked by Bloomberg L.P. ("Bloomberg") to provide an opinion on its dispute with Comcast over news neighborhoods.